IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 21ST NOVEMBER 2006 / 30TH KARTHIKA 1928

ST.Rev..No. 36 of 2005()

TA.56/2002 of S.T.A.TRIBUNAL,ADDL.BENCH,PALAKKAD
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REVISION PETITIONER/RESPONDENT/REVENUE

STATE OF KERALA REPRESENTED BY
THE DEPUTY COMMISSIONER (LAW),
COMMERCIAL TAXES, ERNAKULAM.

BY GOVERNMENT PLEADER SRI GEORGEKUTTY MATHEW

RESPONDENTS: APPELLANT/ASSESSEE

V.SANATHANAN, HOTEL SEVAN SEAS,
IRINJALAKKUDA.

BY ADV. SRI.ARIKKAT VIJAYAN MENON
SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 13/11/2006,THE COURT ON 21/11/2006 DELIVERED THE FOLLOWING:

P.R.RAMAN & K.P.BALACHANDRAN,JJ.

S.T.REVISION.NO.36 OF 2005

Dated this the 21st day of November, 2006

JUDGMENT

Raman,J.

State is the revision petitioner. For the assessment year 1995-96 the Sales Tax Officer by order dated 30/12/1999 completed the assessment of the assessee "Hotel Sevenseas", Irinjalakuda. In the assessment proceedings, he added two times of the suppression detected by the Intelligence Officer in respect of the sales turnover of the Indian Made Foreign Liquor (IMFL). The sales turn over, as per the account, was Rs.95,97,626/- and the unaccounted purchase detected by the Intelligence officer was for an amount of Rs.4,01,731/- plus gross profit at 26%. The assessee filed an appeal before the First

Appellate Authority and the First Appellate Authority by order dated 15/12/2001 held that the Assessing Authority has estimated the turnover by making an addition of 2 times of the suppression detected by the Intelligence Officer and gross profit at 26%. He found force in the contention of the assessee that the the entire purchase of Indian Made Foreign Liquor was effected from Kerala State Beverages Corporation and hence the turnover estimated by adding GP at 20% and the tax levied at 75% is not at all sustainable. But the assessee admitted the offence and the same was compounded departmentally for a sum of Rs.26,200/-. Therefore, the defect warranted a reasonable addition in this case. It is a fact that the entire purchase of IMFL was effected from the Kerala State Beverages Corporation only and the Assessing Authority

has no case that the appellant had effected purchase from other dealers. In these circumstances, the addition made at 2 times of the suppression detected was excessive and hence the Appellate Authority found that an addition of 6.5% of the total sales turnover of IMFL will meet the ends of justice in this case and accordingly ordered. The assessee appealed to the Tribunal. The Appellate Tribunal found that the appellant has effected the entire purchase of IMFL from the Kerala State Beverages Corporation only and the Assessing Authority has no case that the appellant has effected purchase from other dealers. This is not disputed. Hence, the Tribunal found that there is no other suppression in the purchase of IMFL. Reference was also made to the decision of this Court in **Polakulath Tourist Home v. State of Kerala**

((2001) 9 KTR 511 (Ker). Since the entire purchase of IMFL are from the Kerala State Beverages Corporation and the Revenue has not proved that the appellant has purchased IMFL from other dealers, it is ordered that the addition sustained on IMFL is to be deleted. It is against the said order that the present revision is filed.

2. The learned Government Pleader appearing on behalf of the revision petitioner seeks to support the judgment of the First Appellate Authority and contends that the Tribunal was not right in law in interfering with the order passed by the Appellate Authority and deleting the additions made and at any rate, even if it is found that the estimation made by the First Appellate Authority at 6.5% of the total sales turnover of IMFL is held to be wrong, according to him,

the turnover tax on the conceded amount together with the profit should have been upheld. No serious dispute is raised by the learned counsel appearing for the respondent with the above proposition. It is however contended by the learned counsel for the respondent that there is no justification for the estimation at 6.5% as found by the Appellate Authority and in that regard sought to sustain the order passed by the Tribunal.

3. The question that arises for consideration is whether on the facts and circumstances of the case the Tribunal was justified in deleting the estimation made in toto.

4. Admittedly, the sales turnover account for the year 1995-96 for an amount of Rs.4,01,731/- represents the purchase of IMFL from the Kerala State Beverages Corporation

Ltd. The account books produced admitted the offence of non-accounting of the above purchases, corresponding sales and evasion of turnover tax amounting to Rs.26,200/-. The assessee also requested to compound the offence departmentally in lieu of prosecution under Section 47 of the CST Act by remitting compounding fee of Rs.26,200/-. The Assessing Officer estimated the sales based on the unaccounted purchases by adding gross profit at 26%. Hence, the sales turnover of IMFL to which two times of additions were made of the suppression detected by the Intelligence Officer. Undisputably, there was no evidence to show that the purchase of IFML was made other than from the Kerala State Beverages Corporation. The First Appellate Authority, in such circumstances, found that the additions made at two times of the suppression

detected is excessive. However, to sustain the addition of 6.5% of the total sales turnover he did not give any valid reason. In such circumstances and following the decision of this Court in **Polakulath Tourist Home v. State of Kerala ((2001) 9 KTR 511 (Ker))**, the Tribunal ordered that the addition sustained on IMFL is to be deleted.

5. We do not think that the finding of the Tribunal deleting the additions so made is liable to be interfered with in this revision, based on the finding of fact as referred to above. At the same time, we make it clear that the actual amount as detected with a reasonable rate of profit thereon is liable to be assessed for the turnover tax at the prescribed rate. Except to the above extent, the order passed by the Tribunal is confirmed. The Assessing Officer shall pass revised order

of assessment including the amount as detected with reasonable profit thereon for the purpose of assessment of turnover tax at the prescribed rate.

Revision is disposed of as above.

P.R.RAMAN,
Judge.

K.P.BALACHANDRAN,
Judge.

kcv.